IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

WP(C).No. 3148 of 2006(Y)

PETITIONER:

PHILOMINA FRANCIS, AGED 56,
W/O.SWAMINATHAN, ROSHNA NIVAS, MAPPIILA THOTTAM,
MEPPADI, WYNADU DISTRICT,
(RETIRED GOVT. L.P.S.HEADMISTRESS,
MEPPADI, WYANADU).

BY ADV. SRI.BABU CHERUKARA

RESPONDENTS:
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1. **THE ACCOUNTANT GENERAL OF KERALA,**
   ACCOUNTANT GENERAL OFFICE,
   TRIVANDRUM.

2. **THE ASST.EDUCTIONAL OFFICER,**
   VYTHIRI, WYNADU DISTRICT.

3. **THE CHIEF MANAGER,**
   STATE BANK OF TRAVANCORE,
   KALPETTA BRANCH, WYNADU.

4. **THE HEADMASTER,**
   GOVT.L.P.S., MEPPADI, WYNADU.

BY GOVERNMENT PLEADER SRI.SATHISH NINAN for R3
BY SR.GOVT.PLEADER SRI. SURARSHAN for R2
BY ADV.SRI.SANTHOSH MATHEW

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/01/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:	**COPY OF THELETTER DTD. 3/01/2005 ISSUED BY THE 2ND RESPONDENT.**
EXT.P2:	**COPY OF THE ORDER DTD. 16/12/2005 BY THE 2ND RESPONDENT.**
EXT.P3:	**COPY OF THE PATTA FOR THE MORTGAGED PROPERTY ISSUED BY KALPETTA LAND TRIBUNAL DTD. 23/12/88.**
EXT.P4:	**COPY OF THE TAX RECEIPT DTD. 14/06/2006 IN THE NAME OF C.T.GANGADHARAN.**

3RD RESPONDENT'S EXHIBIT:

EXT.R3(B):	**COPY OF THE SHARE HOLDING PATTERN OF SBT AS ON 30/09/2006.**

/TRUE COPY/

Kss

K. M. JOSEPH, J.

W.P.C. NO. 3148 OF 2006 Y

Dated this the 25th January, 2007

JUDGMENT

Case of petitioner, in brief, is as follows:

Petitioner is a retired Govt. L.P. School Headmistress. She retired on 31.3.2005. She had availed a term loan from State Bank of Travancore, Kalpatta Branch. The loan amount obtained was Rs.90,000/= in the year 2003 and the amount was being remitted in the loan account. It is stated that there happened difficulty in repayment of the loan due to financial difficulties. It is stated that the petitioner has to pay off the liabilities of State Bank of Travancore. The amount is demanded. The total DCRG amount of petitioner is Rs.1,05,000/=. According to her, respondents 1 & 2 have no authority to recover any amount from the DCRG due to petitioner towards the Bank's liability. Second respondent has fixed the liability of petitioner as Rs.87,273/= + 2,550/-= Rs.89,823/= vide Ext.P2. Exts.P1 and P2 are challenged and the

prayer sought for is to order that petitioner is entitled to get her DCRG amount unaffected of her liability with the third respondent Bank.

2. The second respondent has filed a Counter Affidavit, wherein it is, inter alia, stated as follows:

The Manager of the State Bank of Travancore had requested to recover the outstanding dues from the DCRG of petitioner and produced a copy of the Agreement executed by petitioner. It is stated that the loan was sanctioned solely on the basis of the undertaking given by petitioner and it is authorised by the undertaking to recover the outstanding dues from the DCRG. It is further stated that as per ruling 1 to 3 of Rule 3 Part III KSR, amount due to a Government Company may be recovered from the DCRG of the Government servant after intimating her. It is stated that in this case, petitioner was given notice in due time.

3. The third respondent has filed a Statement. Therein, it is stated as follows:

The share of the State Bank of India in the equity capital of State Bank of Travancore is 75 per cent. This amounts to Rs.37.50 Crores. The total share capital of State Bank of Travancore is Rs.50 Crores. The Reserve Bank of India has 59.73 per cent equity share capital in the State Bank of India. Ext.R3(b) is produced as Share holding pattern as on 30.9.2006. The State Bank of Travancore is stated to be a statutory Corporation constituted under the State Bank of India (Subsidiary Banks) Act, 1959. It is stated that the purpose of Ruling No.1 of Rule 3 of Part III KSR is to enable public funds due from Government employees to be recovered from DCRG payable to an employee with his consent in writing. Petitioner is estopped from contending after having given consent and availing the loan, it is contended. Ext.R3(c) is produced along with the Statement dated 29.9.2006. In the said Statement, it is also stated that the petitioner availed the loan on 16.10.2003 with interest payable at 13.50 per cent per annum. The amount was to be repaid in monthly instalments commencing from

November, 2003. If she defaulted payment, irrevocable power of attorney was executed by petitioner authorising to recover Rs.3,100/= per month. Petitioner was the Headmistress of the School and she was self-drawing Officer. She deliberately did not make deduction from salary. Ext.R3(a) is produced as irrevocable letter of authority.

4. In the Reply Affidavit filed by petitioner, it is, inter alia, stated that the loan itself is against collateral security and it is secured debt for the Bank. The Guarantor for the transaction is one Shri C.T. Gangadharan, Meppadi and he has mortgaged his property having 25 cents and the residential building thereon towards the loan transaction and it is worth not less than Rs.15 Lakhs.

5. Learned counsel for petitioner would contend that this is a case where it is open to the Bank to proceed against the property secured and it is a harsh case. He would further contend that the loan amount due to the Bank cannot be recovered from the DCRG, as according to him, Ruling 1 to

Rule 3 of Part III KSR, is inapplicable to the State Bank of Travancore, the third respondent. Ruling 1 to Rule 3 of Part III KSR is extracted hereunder:

> *"Amounts due from a Government employee or pensioner to Government Companies, Local Bodies, Co-operative Societies, etc., though not treated as Government dues may be recovered from the death-cum-retirement gratuity payable to him with his consent in writing."*

Referring to the same, learned counsel for petitioner would contend that State Bank of Travancore is not a Government Company because it does not fall under the Companies Act and it is only a Government Company falling under the Companies Act that fall within the purview of the words "Government Company". He points out that it is neither a Local Body, nor a Co-operative Society. He would contend further that if the Government intended that amounts due to State Bank of Travancore could also be recovered from the DCRG, nothing prevented the Government from including the State Bank of Travancore specifically in Ruling No.1 to Note 3 Rule 3 of Part

III KSR. He would also submit that the agreement was executed on account of financial duress.

6. Per contra, learned Government Pleader would contend that the State Bank of Travancore falls under Ruling No.1 to Note 3 Rule 3 of Part III KSR. He referred to the word "etc." figuring in the Ruling. Learned counsel appearing on behalf of third respondent would contend that in fact the Government Company would encompass even the State Bank of Travancore. In this connection, he referred me to a Full Bench decision of this Court in Jacob Philip v. State Bank of Travancore & Others (1972 KLT 914). The Court there was concerned with Section 3(1)(i) of the Land Reforms Act, 1964. In the context of the said provision, the Court proceeded to hold as follows:

> *"7. Then it was contended by the appellant that the Corporation in this case, viz., the State Bank of Travancore, is not one owned or controlled by the State. We were taken through the provisions of the State Bank of India Act, 1955, the State Bank of India (Subsidiary*

Banks) Act, 1959, and the Reserve Bank of India Act, 1934. The position disclosed is that the Reserve Bank of India owns not less than 55% of the shares in the State Bank of India, and cent per cent of the shares in the Reserve Bank of India are owned by the Government. We find too, that a subsidiary bank such as the State Bank of Travancore is to act, as an agent of the State Bank of India if required (S.36 of the Subsidiary Banks Act, 1959), and that the State Bank of India is to act as an agent of the Reserve Bank if so required (S.32 of the State Bank of India Act). Again, under S.37 of the Subsidiary Banks Act, the Central Government has power, after consultation with the Reserve Bank, to direct the subsidiary banks to carry on any business or to prohibit such banks from carrying on any business. Under S.24 of the Subsidiary Banks Act the State Bank has the right of issuing any directions, and the subsidiary banks are bound to comply. S.25 provides for the constitution of the Board of Directors of the Subsidiary Bank. S.27 provides that the General Manager of a subsidiary Bank who is to carry on the day-to-

> *day administration is to be appointed only with the approval of the Reserve Bank. A conspectus of these provisions leaves us in no doubt that there is governmental control in regard to shareholding as well as in regard to the transaction of affairs by subsidiary banks of the type of the respondent in this appeal. We are therefore of the view that the State Bank of Travancore is a Corporation owned or controlled by the State."*

He would also refer me to the decision of a learned Single Judge of this Court in Kuttan Pillai v. State of Kerala (2001 (2) KLT 375). Therein, the learned Single Judge of this Court held as follows:

> *"3. Gratuity is payable to the petitioner on the basis of Rules contained in R.3, Part III of the Kerala Service Rules. R.3 thereof makes it clear that the amount due from retired employees towards Government Companies can be deducted from the Gratuity if they consent for it and only the balance amount need be paid to the incumbent.*

> *When this provision contained in the Rules give right for payment of gratuity after deducting the amount due to the Government Companies, after having agreed or consented in that line, the petitioner cannot now turn round and say that Annexure I is void. It is based on that statutory provisions contained in R.3 Part III of the K.S.R., amount due from the petitioner to the Government Company namely, the Kerala Financial Corporation, is sought to be recovered. Therefore, petitioner will be entitled to get only the balance, if any left, after deducting the amount made mention of by himself in Annexure A1."*

He would further submit that a perusal of Ext.R3(a) would leave no one in doubt that the petitioner has given her consent to have the amount of loan recovered from the DCRG.

7. The question that falls for consideration is whether the amount due to the State Bank of Travancore can be recovered from the DCRG. State Bank of Travancore does not figure expressly in Ruling No.1 to Note 3 Rule 3 of Part III KSR. No doubt, if I adopt the reasoning of the learned Single Judge in

Kuttan Pillai v. State of Kerala (2001 (2) KLT 375), it may not be difficult for me to hold straight-away that State Bank of Travancore which, like the Kerala Financial Corporation, is also a creature of a Statute, is also to be considered as a Government Company under Ruling No.1 to Note 3 Rule 3 of Part III KSR. This is for the reason that just as the Kerala Financial Corporation is created under the State Financial Corporations Act, 1951, indisputably, the State Bank of Travancore is also a Corporation which is a creature of the State Bank of India (Subsidiary Banks) Act, 1959. The shareholding pattern which is referred to already, would put no one in any doubt that it is a Public Body controlled ultimately by the Government, no doubt, through the medium of nearly 60 per cent shareholding which the Reserve Bank of India has in the State Bank of India and 75 per cent shareholding in the equity capital of the State Bank of Travancore being held by the State Bank of India. Unquestionably, the Reserve Bank of India being the Central Bank of the Nation is itself controlled by the provisions of the

Reserve Bank of India Act, 1934. Therefore, it cannot be in the region of any doubt that it is controlled by the Government ultimately. I draw support also in regard to this finding from the finding of the Full Bench decision of this Court which was referred to by me already. No doubt, the decision of the Full Bench was rendered in the context of the Land Reforms Act. It cannot be in the region of any doubt that having regard to Ext.R3(a) the petitioner has indeed granted authority in writing granting consent to the recovery of the amount from the DCRG. Learned counsel for petitioner, no doubt, would rely on a Bench decision of this Court in Surendran v. Mavelikara Primary Co-op. Agrl. & R.D. Bank Ltd. (2005 (4) KLT 619). Therein, the Division Bench was concerned with the question whether the word "salary" used in Section 37 of the Kerala Co-operative Societies Act will include DCRG. The Court found that the amount due to a Co-operative Society from its member cannot be recovered from DCRG under Section 37 and amount cannot be recovered under the Note unless the employee consents to

such recovery. Learned counsel for petitioner would contend that this Court may not interpret Ruling No.1 to Note 3 Rule 3 of Part III KSR on the basis of the word "etc." and it is not necessary to depart from the plain language of the provision.

8. I am of the view that there is no merit in the contentions of petitioner. Undoubtedly, if it is to be treated as a Government Company which, no doubt, I can, following the Judgment of the learned Single Judge already referred to, the petitioner is to be refused relief only on that score. But, even without resting my reasoning on the basis of the word "Government Company" in Ruling No.1, I would think that the employment of the word "etc." is sufficient to comprehend even the State Bank of Travancore among the Institutions which can avail of the benefit of the said provision. I cannot overlook the fact that even Co-operative Societies without any limitation as to the nature of its Organisation are included within the ambit of the Ruling. It escapes my understanding how in such circumstances a Public Body like the State Bank of Travancore which is a Statutory

Corporation which is ultimately controlled by the Government and in fact which is even regarded as an authority under Article 12 of the Constitution of India should be treated as falling outside the ambit of the Ruling. Designedly, the rule making authority when it used the word "etc." contemplated that the categories are not closed categories. In such circumstances, one has to certainly consider the nature of the Organisation. At the very irreducible minimum, Organisations falling within its ambit, I would think, would be Public Bodies which are controlled by the Government ultimately directly or indirectly. I would think that by no stretch of imagination, the word "etc." can be construed so as to exclude from its ambit a Statutory Corporation like the State Bank of Travancore. The word "etc." does not appear to be limited in any sense by the nature of the phraseology which is used in the Ruling. Co-operative Societies of all hues are expressly included. A financial institution which is a public institution as the State Bank of Travancore is, and which is controlled by the provisions of an

Act of Parliament and which is subject to all forms of control over it by the Government, will certainly fall under the word "etc." in the Ruling.

9. In such circumstances, I hold that the State Bank of Travancore would undoubtedly be an institution within the meaning of Ruling No.1 to Note 3 Rule 3 of Part III KSR, and amounts due to the State Bank of Travancore can be recovered on there being written consent for the same as contemplated in law from the DCRG due to the employee. If that be so, I find that there is no merit in the Writ Petition and it accordingly fails and it is dismissed. No costs.

K. M. JOSEPH, JUDGE

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